

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
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5 TIMOTHY FRABBIELE,)
6 Complainant,) ITEM NO. 680F
7 vs.) CASE NO. A1-045929
8 CITY OF NORTH LAS VEGAS; NORTH)
9 LAS VEGAS POLICE DEPARTMENT AND) **ORDER**
10 ASSOCIATION,)
11 Respondent.)

11 For Complainant: Adam Levine, Esq.
12 Law Offices of Daniel Marks

13 For Respondents: Malani L. Kotchka, Esq.
14 Lionel Sawyer & Collins

15 John Dean Harper, Esq.

16 This matter came on before the State of Nevada, Local Government Employee
17 Management Relations Board ("Board"), for consideration and decision pursuant to the
18 provisions of the NRS and NAC chapters 288, NRS chapter 233B, and was properly notified
19 pursuant to Nevada's open meeting laws. The hearing conducted in this matter took place on
20 April 1, 2009, April 2, 2009, September 15, 2009, September 16, 2009 and September 17, 2009.
21 Following the conclusion of the hearing, the parties submitted post-hearing briefs in lieu of
22 closing arguments. The City of North Las Vegas and North Las Vegas Police Department
23 (collectively "City") filed its post-hearing brief on December 11, 2009 and Frabbiele filed his
24 post-hearing brief the same day. Among the issues raised in the City's post-hearing brief is a
25 claim that Frabbiele's claim of prohibited labor practices is barred by the six-month statute of
26 limitations found in NRS 288.110(4).

27 Regardless of the merits of an underlying case, this Board, by statute, may not decide
28 a case that falls outside of the six-month statute of limitations of NRS 288.110(4). As a

1 preliminary matter, this Board must decide whether or not Frabbiele's Complaint complied with
2 that statute of limitations.

3 Complainant Timothy Frabbiele filed a complaint with this Board on March 11, 2008,
4 alleging unfair labor practices against Respondent the City of North Las Vegas. The allegation is
5 to assert that the City committed prohibited labor practices against Frabbiele when it did not
6 confirm his status as a police officer, effectively terminating his employment with the City.
7 After Frabbiele filed his initial Complaint, the City did not file an answer, instead filed a motion
8 to dismiss alleging, inter alia, that Frabbiele did not comply with the six-month statute of
9 limitations.

10 The City argued that the statute of limitations commenced running on September 10,
11 2007 when Frabbiele was informed of the decision to non-confirm his employment and therefore
12 the six-months in which Frabbiele could timely present a claim expired on March 10, 2008.
13 Frabbiele, argued that the statute of limitations did not begin to run until the effective date of his
14 termination, which was September 11, 2007. Frabbiele filed his initial complaint on March 11,
15 2008, exactly six months after the effective termination date, but beyond six months of the date
16 he was notified of the City's decision to non-confirm him. If the statute of limitations begins to
17 run on the date that Frabbiele was notified of the decision, the Complaint is untimely, however if
18 the statute of limitations begins to run on the effective date of his termination, the Complaint was
19 timely.

20 When the Motion to Dismiss was filed, we declined to decide the statute of limitations
21 issue at that time. We denied the City's motion to dismiss without prejudice. The Board noted
22 that it was premature for us to decide the issue based solely upon the pleadings and documents
23 that had been filed at that time, but reserving the right to revisit the issue, should more
24 information be provided to the Board.

25 Frabbiele has since argued that the City's failure to file an Answer means that the City is
26 now precluded from asserting the statute of limitations by NAC 288.220(3). This regulation
27 states that if an answer is not made within the prescribed time period then "the dilatory party is
28 precluded, except with the consent of the opposing party, or the Board, from asserting any

1 affirmative defense in the proceeding.” NAC 288.220(3). Frabbiele has not consented to
2 allowing the City to present the statute of limitations as an affirmative defense. The City has
3 argued that it should not be precluded from raising the statute of limitations defense because the
4 City asserted the defense at the outset of the case in its motion to dismiss and has not abandoned
5 its claims throughout the proceeding.

6 In this case, there can be no question that Frabbiele was notified of the City’s intention to
7 contest the statute of limitations issue, as this issue was raised in the City’s first motion to
8 dismiss, and Frabbiele responded to the City’s arguments in his opposition and addressed the
9 City’s statute of limitations arguments. Therefore Frabbiele was notified at the outset of the
10 City’s intention to assert an affirmative defense. Further, the statute of limitations issue has
11 been contested throughout this case. For these reasons the Board consents to the City’s
12 presentation of its statute of limitations defense and the Board will consider it.

13 During the course of the hearings conducted in this case, Frabbiele himself confirmed that he
14 was given notice of the fact that he would be non-confirmed on September 10, 2007. (Tr. p. 857).
15 Frabbiele testified that he was called into a meeting with the Chief of Police on September 10,
16 2007, and at that meeting he was informed that he was being non-confirmed and signed an
17 employee acknowledgement of personnel order 07-348 which stated that he would be non-
18 confirmed. (Tr. p. 857). The City also presented a copy of the signed acknowledgement dated
19 September 10, 2007 in which Frabbiele acknowledged receipt of the personnel order informing
20 him that he would be non-confirmed. (Exhibit 13).

21 NRS 288.110(4) states that “[t]he Board may not consider any complaint or appeal filed
22 more than 6 months after the occurrence which is the subject of the complaint or appeal.”

23 The statute of limitations in NRS 288.110(4) “is triggered when the complainant has
24 reason to believe that an unfair labor practice has actually occurred.” *Cone v. Nevada Service*
25 *Employees Union*, 116 Nev. 473, 477, 998 P.2d 1178, n.2 (2000).

26 More recently, the Nevada Supreme Court has stated that the six-month limitations
27 period in NRS 288.110(4) begins when the complainant knew, or should have known, of the
28 occurrence which is the subject matter of the complaint. *State of Nevada Local Government*

1 *Employee-Management Relations Board and John Strahan v. Washoe County Sheriff's*
2 *Supervisory Deputies Association*, Case No. 48708 (Nev. 2008).

3 The City argues that Frabbiele knew of the occurrence when Frabbiele was provide d
4 notice that he was not going to be confirmed, i.e. on September 10, 2007. The City has asserte d
5 as authority for this point a long line of federal cases beginning with *Delaware State College v.*
6 *Ricks*, 449 U.S. 250 (1980) which hold that the statute of limitations for claims of discriminatio n
7 begins to run when the employee is given notice of the adverse employment practice, not from
8 the effective date of the termination. This holding has since been adopted by the National Labor
9 Relations Board for discriminatory discharge claims. *Postal Service Marina Center*, 271
10 N.L.R.B. 397 (1984).

11 The *Ricks* rule is a federal rule and therefore is only applicable to claims arising under
12 federal law. It has encountered mixed results at the state level, with a slight majority of states
13 following *Ricks*, and a minority of jurisdictions rejecting the federal rule, usually to give effect to
14 the remedial nature of anti-discrimination statutes and to provide for clarity in determining the
15 actual accrual date. *E.g Vollemans v. Town of Wallingford*, 928 A.2d 586 (Ct.App. 2007) (under
16 state anti-age discrimination statute).

17 As a general principle the Nevada Supreme Court has stated that the Employee-
18 Management Relations Act should be construed to be consistent with federal labor laws. *Weinert*
19 *v. Beatty*, 121 Nev. 243, 116 P.3d 829 (2005); *City of Reno v. Reno Police Protective*
20 *Association*, 118 Nev. 889, 59 P.3d 1212 (2002). As noted above, federal labor laws and federal
21 anti-discrimination laws are consistent and follow the *Ricks* rule. The Nevada Supreme Court
22 has given the appropriate standard in its *Strahan* order, and the *Ricks* rule is consistent with the
23 Nevada Supreme Court pronouncements in *Cone* and *Strahan*. Accordingly, the limitations
24 period commences when Frabbiele knew or should have known that he was being non-confirmed
25 on September 10, 2007.

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1 Having considered the above, the Board makes the following findings of fact and

2 Conclusions of Law:

3 **FINDINGS OF THE FACTS**

- 4 1. The Board consents to the City’s presentation of a statute of limitations defense.
- 5 2. Timothy Frabbiele was notified on September 10, 2007 that he was going to be non-
- 6 confirmed by the City of North Las Vegas Police Department. (Tr. 857-858), (Exhibit
- 7 13).
- 8 3. The effective date of the non-confirmation was September 11, 2007.
- 9 4. Timothy Frabbiele’s Complaint was filed with this Board on March 11, 2008.

10 **CONCLUSIONS OF LAW**

- 11 1. The EMRB has exclusive jurisdiction over claims for unfair labor practices under NRS
- 12 Chapter 288.
- 13 2. NRS 288.110(4) contains a six-month statute of limitations. By this statute, the Board
- 14 may not decide claims which are filed outside of this statute of limitations.
- 15 3. The six month statute of limitations of NRS 288.110(4) began to run on September 10,
- 16 2007, as this was the date that Frabbiele was notified that the City would non-confirm
- 17 him as a police officer, and made clear in Exhibit 13, which was filed before the Board.
- 18 4. Frabbiele’s Complaint, filed on March 11, 2008, was untimely as it exceeded the six-
- 19 month statute of limitations of NRS 288.110(4).
- 20 5. Because the Complaint was untimely, the Board does not reach a decision on the
- 21 underlying prohibited labor practice claims alleged by Frabbiele.

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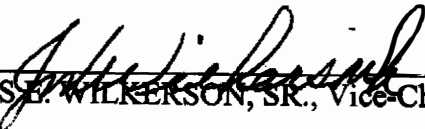
ORDER

It is hereby ordered that this matter be dismissed with prejudice.

DATED this 1st day of February, 2010.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: 
SEATON J. CURRAN, ESQ., Chairman

BY: 
JAMES E. WILKERSON, SR., Vice Chairman

BY: 
SANDRA MASTERS, Board Member